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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 1351

ROSEMARY C. MOGGE AND OFFICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 28, AFL-CIO,
Petitioners,

vs.

DISTRICT NO. 8, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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OPINIONS BELOW.

Correctly stated in the petition.

JURISDICTION.

Correctly stated in the petition.

QUESTION PRESENTED.

The initial question posed by the petition assumes facts which were contrary to the findings of both the trial court and the Court of Appeals. Question 1 is premised on the contention that respondent repudiated the collective bar-

gaining agreement. The Court of Appeals agreed with the lower court that respondent's contesting "of the validity of the collective bargaining agreement 'was not unreasonable.' "[1]

The second question also assumed facts which are contrary to the record. Petitioners' statement that the "decision of the Court of Appeals [is] based upon findings wholly unsupported by any evidence" flies in the face of the record which discloses that both the trial court and the Court of Appeals decision was predicated upon specific factual findings.

The third question dealing with the applicability of the United States Arbitration Act is not in issue. Petitioners below contended that the United States Arbitration Act was applicable and that contention was accepted by the 7th Circuit. Thus there is no need for this Court to be concerned with the issue of the United States Arbitration Act. That question may be saved for another day.

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1. Petitioners' Appendix A, p. 5(a), hereinafter referred to as P. A.

ARGUMENT.

The only real question presented is whether this Court should review a decision of the Court of Appeals in which that court found that respondent's reasonable basis for contesting the validity of the collective bargaining agreement did not constitute repudiation within the meaning of *Drake Bakeries.*[2] This petition does not present any important question of substantive law arising under Section 301 of the National Labor Relations Act. The National policy of encouraging arbitration is not involved.

What is involved is the simple legal question whether respondent, predicated upon certain facts, had the right to contest the validity of the collective bargaining agreement and to timely raise the issue of the appropriateness of a stay.

This is not the time to review all of the facts but it is essential to note that petitioners' statement "that the findings of the Court of Appeals upon which its decision is based are wholly unsupported by any evidence" is simply not true.[3] The 7th Circuit found that "District No. 8 refused arbitration on the grounds that the collective bargaining agreement was invalid for want of approval by its Council . . . District No. 8 demonstrated that the agreement was never approved by the District Council and that Mrs. Mogge knew of District procedures requiring Council approval of matters of importance. This was sufficient to raise a good faith doubt as to the validity of the agree-

2. *Drake Bakeries* v. *Local 50, American Bakery & Confectionary Workers International Union, AFL-CIO,* 370 U. S. 254 (1962).

3. P. A., p. 21.

ment.'"[4] Prior to the signing of the contract the parties operated under an oral understanding. Mrs. Mogge acknowledged that she was familiar with the by-laws of the organization, that she took the official notes of all District Council meetings and that all expenditures had to be approved by the Council.[5] In addition, a financial report listing all payments was submitted to the Council for approval.[6] Binding the District to pay specific salaries for two years was as much an expenditure as was leasing of a typewriter for a similar period of time. The failure to have the agreement submitted to the Council for approval was the basis for respondent's refusal to arbitrate. The 7th Circuit found that "District No. 8 had the right to a judicial determination of the threshold question of validity before required to proceed with arbitration. Since District #8 had a proper ground for challenging the validity of the collective bargaining agreement, its refusal to arbitrate until that question could be determined did not constitute a waiver of arbitration.'"[7] The above findings are amply supported by the record.

This is not a case in which the respondent unequivocally refused to arbitrate any claim. What the respondent did was to question whether or not its agent had the authority to enter into the contract. The difference is significant. This court in *Warrior* emphasized that "The Congress . . . has by § 301 of the Labor Management Relations Act, assigned the Courts the duty of determining whether the reluctant party had breached his promise to arbitrate.'"[8] The 7th Circuit observed that if "District No. 8 should have pro-

4. P. A., p. 5(a).

5. A. 56-57.

6. A. 58.

7. P. A., p. 5(a).

8. *United Steelworkers* v. *Warrior and Gulf Navigation Company*, 364 U. S. 574, 582 (1961).

ceeded with arbitration forthwith, it might have lost the right to challenge the validity of the agreement."[9] Accepting petitioners' contention that contesting the validity of a contract forfeits the right to a stay would not encourage arbitration but establish the damage suit as a new technique in labor relations.

Drake Bakeries taught us that "the circumstances of the claimed repudiation are critically important."[10] Both the trial court and the Court of Appeals considered the circumstances of the claimed repudiation in concluding that the reasons for the refusal were "not unreasonable."[11] Whether certain facts form a reasonable basis for questioning the validity of an agreement is particularly within the province of the trial court and it is not that type of question that should concern this Court.

In essence the petition argues that the findings of the Court of Appeals are in error. Petitions which complain of factual interpretations do not present issues which are appropriate for review by this Court.

CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Counsel for District No. 8, International Association of Machinists, AFL-CIO.

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9. P. A., p. 7(a).
10. *Supra.* at p. 261.
11. P. A., p. 5(a).